

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ROBERT B. LOVE, M.D.,

Plaintiff,

v.

MEDICAL COLLEGE OF WISCONSIN, INC.,

ALFRED C. NICOLosi, M.D.,

PAUL S. PAGEL, M.D.,

DAVID C. WARLTIER, M.D., and

LARRY LINDENBAUM, M.D.,

Defendants.

Case No. 2:15-cv-00650-LA

**PLAINTIFF'S MOTION FOR SANCTIONS
AGAINST DEFENDANT MEDICAL COLLEGE OF WISCONSIN, INC.**

Plaintiff, Robert B. Love, M.D. ("Dr. Love"), by and through his undersigned counsel, respectfully moves this Court to enter sanctions against Defendant Medical College of Wisconsin, Inc. ("MCW"). Dr. Love submits the accompanying Memorandum in support of this Motion.

WHEREFORE, for the reasons stated in the accompanying Memorandum, Dr. Love respectfully requests the Court to enter a default judgment against MCW on Counts I, III, IV, V, VI, VII, VIII, IX, X, XI, and XII of the Third Amended Complaint.

WHEREFORE, in the alternative, Dr. Love respectfully requests the Court to impose on MCW one or more of the following sanctions:

- A. issuing a spoliation instruction to the jury at trial;
- B. barring MCW from examining Dr. James Tweddell on deposition or at trial;
- C. barring MCW from introducing as evidence or relying on in any way at trial any document that Dr. Tweddell sent, received, or authored, including, but not limited to, the draft document entitled, "Report to Froedtert Quality Committee concerning CT Service mortalities in March and April 2014";

- D. barring MCW from filing any dispositive motion with respect to the Third Amended Complaint;
- E. barring MCW from filing any affirmative defenses to the Third Amended Complaint;
- F. ordering that *any* future discovery violation by MCW shall result in the immediate entry of default judgment against MCW on all Counts; and
- G. ordering MCW to pay all costs and attorneys' fees that Dr. Love has incurred or will incur in preparing his Motion for Sanctions and all papers in support thereof.

WHEREFORE, in the further alternative, Dr. Love respectfully requests the Court to take this Motion under advisement and grant Dr. Love the following relief to allow him the opportunity to conduct limited discovery bearing on this Motion:

- A. ordering MCW to produce immediately all documents in its possession, custody, or control concerning MCW's destruction of Dr. Tweddell's emails;
- B. ordering to appear for deposition by Dr. Love's counsel Sarah Cohn, John Newsome, Michael Malone, Thomas Schrimpf, and current or former MCW employees with specialized knowledge of MCW's computer systems, its policies and procedures concerning the removal of employee emails, and the circumstances surrounding MCW's removal of Dr. Tweddell's emails on or about July 1, 2015; and
- C. ordering MCW to pay all costs and attorneys' fees that Dr. Love will incur in conducting all discovery concerning MCW's destruction of Dr. Tweddell's emails, and in preparing for and attending any Court hearing concerning MCW's destruction of Dr. Tweddell's emails.

Dated: August 9, 2018

Respectfully submitted,

/s/ Alexander R. Hess

Edward F. Ruberry

Alexander R. Hess

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Counsel for Plaintiff, Robert B. Love, M.D.

CERTIFICATION

I hereby certify that on August 9, 2018, a copy of the foregoing document was filed electronically. Parties may access this filing through the Court's CM/ECF system.

/s/ Alexander R. Hess
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